



POLICE DEPARTMENT CITY OF NEW YORK

October 21, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer David Sammarco  
Tax Registry No. 937471  
47 Precinct  
Disciplinary Case No. 2015-14582  
-----

**Charges and Specifications:**

1. Said Police Officer David Sammarco, while on-duty and assigned to the 47th Precinct, on July 26, 2014, was discourteous to Person A, to wit: said Police Officer did, in sum and substance, tell Person A to move his "fucking" car, told him to give him his "fucking license" and instructed him not to "fucking move."  
P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT - GENERAL  
GENERAL REGULATIONS
2. Said Police Officer David Sammarco, while on-duty and assigned to the 47th Precinct, on July 26, 2014, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did state to Person A, "I hate these fucking Jamaicans."  
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED  
CONDUCT - GENERAL REGULATIONS
3. Said Police Officer David Sammarco, while on-duty and assigned to the 47th Precinct, on July 26, 2014, was discourteous to Person A to wit: said Police Officer did take Person A driver's license and threw it out the window of said Police Officer's Department vehicle.  
P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT - GENERAL  
GENERAL REGULATIONS

**Appearances:**

For the Department: Daniel Maurer, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: John Tynan, Esq.  
Worth, Longworth & London, LLP  
111 John Street-Suite 640  
New York, NY 10038

**Hearing Date:**  
August 18, 2016

**Decision:**  
Not Guilty

**Trial Commissioner:**  
ADCT Nancy R. Ryan

### REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 18, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Officer Stephanie Mleczkowski as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of the charged misconduct.

### FINDINGS AND ANALYSIS

It is undisputed that on July 26, 2014, Respondent, was assigned to the 47 precinct anti-crime team. At approximately 1830 hours he was in plainclothes in an unmarked car with two partners. In the vicinity of East 213th Street in the Bronx, the Respondent pulled up behind a car occupied by Person A and came to hold Person A's license. The way he obtained the license, what he did with it and the words he used to address Person A are in dispute.

Person A did not appear at trial, nor is there any transcript or audio recording of his interview with CCRB. Instead, Stephanie Mleczkowski, who is now a NYPD officer but was previously the CCRB investigator assigned to this case, presented testimony summarizing her recollection of complainant's interview. She interviewed Person A shortly after the incident and recounted at trial that Person A told her he was in a double-parked car in the Bronx when he was asked to move the car. She further testified that Person A, "alleged that an officer used discourtesy towards him and also had thrown his license out the window of the car while driving off." When asked to further specify what Person A told her, she said, "he alleged that an officer told him in substance, 'Move your fucking car,' and 'I hate these fucking Jamaicans,' " and also said to him, "Give me your fucking license." (Tr. 9)

Officer Mleczkowski testified that Person A told her that he gave the officer his license and then the officer got back in his car and drove away with the license. He also told her that the officer threw the license into the intersection. She believes he said this happened at the end of the block. (Tr. 10) On cross-examination, after reviewing her CCRB investigation folder, she testified that Person A said his license was thrown out at the intersection of East 213<sup>th</sup> Street and Paulding Avenue. (Tr. 30) She also testified on cross-examination that she was not sure where Person A had actually stopped his car on 213<sup>th</sup> Street. (Tr. 32)

Person A provided Officer Mleczkowski with a license plate number for the car he identified as the officer's vehicle. She believes this was the vehicle assigned to Respondent. (Tr. 12) Admitted into evidence were photos provided to Officer Mleczkowski by Person A. Department Exhibit 1B is a picture of a license plate. Person A told her that after the officer drove away, he followed the vehicle and took a picture after it was parked. Department 1A is a

picture that Person A told her was a picture of his Georgia driver's license on the ground in the intersection where the officer threw it. (Tr. 13-14)

Respondent testified that he was appointed to the NYPD in 2005 and, prior to the time of the incident, had made approximately 660 arrests, had assisted in approximately 3500 arrests and had issued over 1000 summonses. On July 26, 2014 he was working "Anti-Crime overtime, violence reduction." He did not have a particular assignment in the area of Paulding and 213<sup>th</sup> Street at that time but was responding to a call for an additional unit and was driving near 213 Street and Holland Avenue. (Tr. 39-41) Before he reached Holland Avenue, he saw a double parked car on 213<sup>th</sup> Street. The car was on a one way road and was blocking the police vehicle from proceeding on 213<sup>th</sup> Street. He had his lights and sirens on and used the air horn to try to get the driver to move the double parked car. When the driver didn't move, Respondent got out of his car, approached the driver's side window and asked the driver to please move his vehicle as he needed to assist officers further up the block. (Tr. 41-45) Respondent testified that the driver said, "I don't give a shit. I don't care if they get hurt. I'm waiting for a friend." (Tr. 45) Respondent asked for the driver's license and the driver gave it to him. Respondent looked at the driver's license, again asked him to move his vehicle, and gave him back his license. He did not write down any information from the license. (Tr. 54) He further testified that he asked the driver to remain because he was going to return to give him a summons. (Tr. 45-46) The driver moved the car out of the way and Respondent proceeded on 213<sup>th</sup> Street. Respondent denied using any profane or harsh language to obtain the license. He also denied making any comment on the driver's ethnicity. (Tr. 46) Respondent testified that the intersection of Paulding Avenue and East 213<sup>th</sup> Street is about four blocks from where the car had been double parked. He does not remember if he ever got to that intersection that day. (Tr. 48-49) He does remember that he

returned to issue the summons (after responding to the 10-85), but the double parked car was gone. (Tr. 45-46)

Other evidence in the case consists of testimony from Officer Mleczkowski that she reviewed Respondent and his partner, Officer Makel's, memo books for July 26, 2014 and found that neither book documented a 10-85 call for assistance. (Tr. 24-25) She also reviewed Sprint reports and did not see a 10-85 call for assistance listed there for the area in question. (Tr. 25) On this issue, Respondent testified that the Anti-crime unit keeps in touch by phone or radio. (Tr. 40-41) He did not specify how he received the call for assistance he testified about in this case.

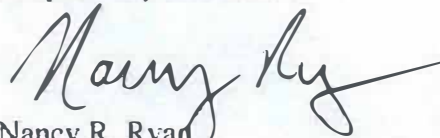
The charges in this case are all based on Person A's statements to the CCRB investigator. Respondent, who testified at trial under oath, has denied that he made any of the statements as alleged by Person A or that he took the actions alleged by Person A. Where one party claims something happened and the other party denies it, the issue becomes one of credibility. In this case I find that it is not possible to give the evidence presented by the Department Advocate sufficient weight to prove the charges by a preponderance of the evidence.

In this case the court did not even have the benefit of hearing an audio tape or reading a transcript of Person A's statements. The court was only provided with the recollections of an investigator as to what Person A told her. It is difficult, and in fact sometimes impossible, to determine credibility where the trier of fact does not have the benefit of observing the witness's demeanor or being able to assess whether the witness's version of events holds up under cross-examination. Here, because the court did not have a transcript or tape recording of the interview, the court did not even know exactly how the witness presented his story, what questions were asked, how they were asked or whether there was any hesitation, inconsistency or wavering in Person A's answers.

With regard to the documents submitted by the Department, we also cannot question Person A about the pictures that he provided to the investigator. A picture of what may be a license somewhere on some ground does not prove that Respondent threw Person A's license out of his car window. I do not accept the Department's position that the fact that Person A went to the trouble to take these photos proves he is telling the truth. Without being able to explore Person A's motivations further, there are many reasons which may have prompted him to take the photos.

While I acknowledge there was no documentation to support Respondent's account that he was responding to a call for assistance when he came upon Person A's car, that aspects of his account were not completely logical, and the fact that portions of Respondent's testimony were questionable, does not relieve the Department Advocate of its burden of proof. In this case, the unsubstantiated double hearsay testimony comprised of an investigator's recollection of an interview, and photographs presented without sufficient context are insufficient to meet that burden of proof. Accordingly, I find Respondent Not Guilty of the charged misconduct.

Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**

JAN 19 2017  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER